

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CELENIA R.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY  
REGIONAL CENTER,

Service Agency.

OAH No. 2011110710

**DECISION**

The hearing in the above-captioned matter was held on February 7, 2012, before Janis S. Rovner, Administrative Law Judge, Office of Administrative Hearings, in Van Nuys, California.

Celenia R. (claimant) was represented by her parents, Christina R. (mother) and Marcos R. (father).<sup>1</sup> The North Los Angeles County Regional Center (NLARC, regional center or service agency) was represented by Stella Dorian.

Evidence was received, the case argued, and the matter was submitted for decision on February 7, 2012.

The Administrative Law Judge issues her factual findings, legal conclusions, and order, as follows:

**ISSUE PRESENTED**

Shall NLARC fund claimant's transportation services to and from her day program through its vendored private transportation company?

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<sup>1</sup> Initials are used in the place of family surnames to protect claimant's privacy.

## FACTUAL FINDINGS

### *Jurisdiction and Parties*

1. Claimant is a twenty-seven year-old woman (born January 18, 1985) who is a NLARC consumer of services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)<sup>2</sup> based on a diagnosis of mild mental retardation.

2. On October 31, 2011, the service agency issued a notice of proposed action (NOPA) informing claimant that it had denied her request to have service agency fund her transportation services through R & D, a private transportation company vendored by NLARC. Regional center based its denial on the Lanterman Act's mandate that it must utilize generic resources<sup>3</sup> to fund claimant's supports and services prior to expending any of its own funds. Presently, claimant is using a generic resource, Access Services, for transportation to and from her day program. Regional center also based its decision on a law applicable to funding transportation services effective July 2009, which was enacted in response to the State's worsening budget crisis.<sup>4</sup> The law prohibits regional centers from funding private specialized transportation services for an adult consumer who can safely access and use public transportation when it is available, and requires regional centers to utilize the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's individual program plan (IPP).

3. On or about November 8, 2011, claimant filed a fair hearing request, contesting the service agency's decision to deny her request to fund claimant's transportation through a private transportation company. This hearing ensued. All jurisdictional requirements have been met.

### *Claimant's Current Services and Status*

4. Claimant lives with her parents and has one older and one younger sibling who reside with the family at their home in Reseda. Her parents are her conservators. Claimant graduated from Reseda High School in 2009, and speaks both English and Spanish. Currently, she receives SSI (\$840 per month), 24 hours of in home support services (IHSS), and Medi-Cal benefits. Regional center funds 15 hours of respite services per month, the Pathpoint, Inc. day program, and day care services for claimant.

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<sup>2</sup> Welfare and Institutions Code section 4500 et seq. All statutory citations are to the Welfare and Institutions Code, unless otherwise noted.

<sup>3</sup> See, e.g., sections 4644, 4646.4, 4646.5, subdivision (a)(4), and 4659.

<sup>4</sup> See section 4648.35.

5. Claimant's Individual Program Plan annual review was held on January 14, 2010 (2010 IPP). The IPP reflects that claimant shares a room with her sister and contributes on occasion to household chores, including taking out the trash and taking her dishes to the sink. Claimant is in good health. She is ambulatory and can carry out all of her grooming and hygiene practices independently without verbal prompts. She can perform other tasks independently, but sometimes needs verbal prompts. She is unable to carry out monetary transactions independently; she can identify bills and coins but cannot make change. Her mother helps her budget her money each month. Her mother reported that Claimant exhibits wandering behavior about one time per year, although she has not wandered away overnight and will not leave her immediate neighborhood. During the 2010 IPP annual review, it was noted that Claimant does not utilize public transportation and relies on her parents to transport her whenever she wants to access the community. Eventually, Claimant wants to work in a supported employment situation. The IPP includes as objectives that she will work and live independently and learn to use public transit.

6. From January 22, 2008 through February 16, 2011, she attended the NEXUS program at Tierra Del Sol. NEXUS is a community integration program. While in the NEXUS program she received support enrolling in and attending classes at two junior colleges and an occupational center, all three located in the San Fernando Valley. As she was learning to navigate the campuses, she was enrolled in classes that improved her vocabulary and reading skills and attended physical education classes that promoted healthy living and enabled her to build her stamina and endurance. She also received instruction with developing educational tools to help her manage tasks and activities. With assistance from NEXUS, claimant strengthened a variety of vocational skills while volunteering at local community and non-profit organizations. She benefitted from her classes, but reached a point where she was ready to move on to the next phase of the program, pursuing vocational training in her fields of interest.

7. During her time at NEXUS, claimant was learning to utilize public transportation safely and independently. The process included selecting a place to visit, planning the bus route to take, determining the cost of the trip, and riding the bus safely. At the conclusion of her time at the NEXUS program, claimant was able to safely take public transportation to familiar destinations with minimal support. (Exhibits 1 and 3.)

*Transportation to and from the Pathpoint Program*

8. The 2010 IPP recites claimant's desire to switch her day program from the NEXUS program to Pathpoint. The parties acknowledged in the IPP that Claimant would utilize Access Services, a public shared-ride transit service for individuals with developmental disabilities, for transportation to and from the Pathpoint program.

9a. A copy of the Access Services' Riders Guide, which includes the rules and procedures by which Access operates, is given to all regional center consumers who use the service. (Exhibit 6.) According to the Riders Guide, the service does not follow fixed routes or schedules. Users schedule appointments with Access for door-to-door pick up in advance.

Specific appointments may be made by calling Access at least one day in advance. Standing orders may be scheduled in advance for recurring pick-up at a specific time each day. Access vans will frequently pick up or drop off more than one passenger at various stops on its recurring routes. Claimant's parents made a standing order for Access to pick claimant up in the morning at their residence and drop her off at Pathpoint and, in the evening, to pick her up at Pathpoint at 3:35 p.m. and bring her back home. Typically, there were three or four other passengers sharing the Access vehicle with her.

9b. Access provides curb-to-curb service; the driver of the Access van does not leave the van to enter a building or knock on a door to pick up riders. The Access vehicle is considered on time if it arrives within a 20-minute window of the scheduled pick-up time. The 20-minute window is necessary because Access is a shared ride service and the vehicle may have multiple pick-ups and drop-offs along the same route. Each rider may arrange for an automated phone call (call-out) generated by the vehicle's driver to alert the rider when the vehicle will arrive or that it has arrived. The Access Services rider manual emphasizes that riders cannot rely upon a call-out and must be at the curb when the Access vehicle arrives. The policy requires the driver to wait at curbside for five minutes once the Access vehicle has arrived. If the vehicle arrives earlier than the scheduled pick-up time, it will wait until the scheduled pick-up time and five more minutes before leaving. A driver who is late for a scheduled pick up will also stop at the designated location. Access Services utilizes a global positioning system (GPS) in each vehicle to determine the location of the vehicle on its route and whether it is late.

9c. A rider who has a standing order for recurring trips with Access Services may be suspended from using the service if the rider incurs six "rider no shows" in 60 days. A rider is charged with a "rider no show" if a trip is cancelled later than 10:00 p.m. the day before the scheduled trip or the rider does not appear for the scheduled ride within five minutes of the driver's arrival, if the driver has arrived within the 20-minute pick-up window. A rider may have a "rider no show" removed from his or her record if the rider can show Access Services that the "no show" was for good cause or due to circumstances beyond the rider's control.

10. Since mid-February 2011, claimant has attended the Pathpoint ACCESS day program in Chatsworth, California, five days per week, which regional center funds. The program begins each day at 8:30 a.m. and ends at 3:30 p.m. The Pathpoint program focuses on vocational training and building skills needed for gainful employment. Attendees interact with other workers. To prepare participants to obtain a job, Pathpoint conducts training and assessments. As part of the program, participants attend Pierce Junior College in Woodland Hills and learn to use public transit.

11. Pathpoint prepared an annual planning worksheet for claimant on June 10, 2011, which included her goals, skills, objectives, likes and dislikes (the report). As stated in the report, claimant's goal is to find a job. She also wants to learn to take the bus to and from Pathpoint by herself and already knows which buses to take. While at Pathpoint during the day, she takes buses to different destinations in the community with her group and learns

to plan the bus routes to get to the destinations. The report also noted that she uses Access Services for transportation or her mother, father and brother drive her. At the time the report was prepared, claimant mentioned that Access had recently cancelled her scheduled ride for ten days because she was not aware that she had to wait at the curb to be picked up. As of the date of the report, Claimant had taken Access to Pathpoint every week day unless she missed her Access transport. She also claimed to be late to Pathpoint when Access picked her up late.

### *Claimant's and Regional Center's Perspectives*

12a. At the hearing, her parents expressed unhappiness with Access Services and were concerned it was not an appropriate or reliable form of transportation for claimant. Although her mother works from 8:00 a.m. to 5:00 p.m. and her father works from 4:00 a.m. to as late as 2:00 p.m., there are many times when claimant's parents drive her to Pathpoint in the morning and pick her up in the afternoon. They want regional center to fund private transportation through its vendor because they believe it would be more reliable and prompt in transporting claimant to and from Pathpoint. The Access Services' vehicle has, at times in the past, dropped claimant off at Pathpoint in the morning after the 8:30 a.m. program start time and picked her up later than the scheduled time of 3:35 p.m. On some occasions, claimant arrived in the morning so late that her group had already left for an outing, leaving claimant at Pathpoint without being able to participate in the group's activity. Her late arrivals are disruptive and make it difficult for her to benefit from the program.

12b. It was not shown that Access was late in picking claimant up in the morning or afternoon. Rather, claimant had scheduled a standing order for a recurring pick up that did not allow Access sufficient time to pick her up and drop her off at Pathpoint by 8:30 a.m. given Access' 20-minute window for pick up. Initially, claimant arranged for Access to pick her up in the morning at 8:00 a.m. Later, the parents changed the morning pick-up time to 7:30 a.m., and then asked to change it to 7:00 a.m. but apparently had to wait several months before the change was implemented. Claimant's problems with Access Services seemed to revolve primarily around the 20-minute window the service uses when picking up passengers. More recently, in November 2011, Pathpoint reported to regional center that claimant's problems with late arrivals to the day program seemed to have been resolved.

12c. Numerous times from June to October 2011, Access notified claimant in writing that she had been charged with "rider no shows" because she did not appear when Access arrived and she had not properly cancelled the service for that day. Her Access service was suspended at least once because she incurred six "rider no shows." Parents did not show that they used Access' formal complaint process to file any complaints about the service or contest any of claimant's "rider no shows." They did phone Access to complain about their problems with the service.

13. Because of the concerns parents have about Access Services' reliability for claimant, regional center offered to conduct a travel training assessment and provide travel training services to claimant. Claimant's parents did not agree to the assessment or training

and gave no reason to the regional center for declining the offer. At the hearing, claimant's father made it clear that he does not want claimant to use the public bus system due to concerns he has for his daughter's safety; she would have to transfer to another bus by walking across a very busy intersection at Victory Boulevard and Topanga Canyon Boulevard in Woodland Hills. Both Pathpoint and regional center believe, however, that claimant is capable of taking regular bus routes available to the general public if her parents allow regional center to provide her with travel training services. These services focus on helping her use bus maps to plan her trips and teaching her to take public buses from one fixed point to another.

14. Regional center must use generic resources, such as Access, for transportation services if claimant can safely use the service. It was not clear from the record whether claimant's parents, the regional center, or a third-party pay the \$ 2.50 per one-way trip fare for Access. It was not disputed that Access Services is less costly than comparable private transportation provided by regional center's vendor. More importantly, regional center's private transportation vendor operates in a manner very similar to Access Services, using, for example, a 15-minute arrival window when picking up passengers.

## LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal regional center's denial of her request on approximately November 8, 2011. Jurisdiction exists to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 3.

2. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

3. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, claimant bears the burden of proof because she is requesting a new benefit in asking regional center to fund private transportation services to and from her day program.

4. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of people with developmental disabilities. (§ 4501.)

5. The Lanterman Act is a comprehensive scheme to provide "[a]n array of services and supports . . . sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." (§ 4501.) The purposes

of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, 4685) and (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community.” (§§ 4501, 4571, and 4750; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

6. Services and supports are to be provided in conformity with the IPP. (§ 4646.) The process “is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments.” (§ 4646, subd. (a).) Prepared by a planning team, the formulation of the IPP is a collaborative process with consumer choice as one consideration in formulating the IPP. (See §§ 4512, subd. (b) and 4646.) The planning team, which determines the content of the IPP and the services and supports to be purchased in furtherance of it, is made up of the individual consumer, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j) and 4646, subd. (d).) When the parties cannot agree on the terms and conditions of the IPP, a fair hearing decision may, in essence, establish the terms. (See § 4710.5, subd. (a).)

7. The services and supports to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client’s particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subd. (a) & (b), 4648, subd. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken. A priority is assigned to maximizing the client’s participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1) & (2).)

8. Section 4512, subdivision (b), of the Lanterman Act defines the services and supports that may be funded, and sets forth the process through which they are to be identified, namely, the IPP process:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer’s family, and shall include consideration of a range of

service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan and the cost-effectiveness of each option . . . .

9. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide the services in a cost-effective manner. (§§ 4512, subd. (b), 4640.7, subd. (b), and 4646, subd. (a).) A consumer must also utilize the least expensive transportation modality that meets the family's and consumer's needs, as set forth in the IPP. (§ 4648, subd. (a)(6)(D).) In addition, regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services. (§ 4648, subd. (a)(8).)

10. Section 4646.4, effective September 1, 2008, requires regional centers to establish an "internal process" to be applied at the time of development, scheduled review, or modification of a consumer's IPP. The "internal process" must adhere to "federal and state law and regulation, and when purchasing services and supports," and ensure (1) conformance with purchase of service policies, as approved by the Department of Developmental Services; (2) utilization of generic services and supports when appropriate; and (3) utilization of other services and sources of funding.<sup>5</sup>

11. Finally, section 4648.35 restricts regional center from funding private specialized transportation services for an adult consumer who can safely access and utilize public transportation, when that transportation is available.

12. Considering all of the evidence, claimant's appeal must be denied. Section 4648, subdivision (a)(6) (D) requires regional center, claimant and her parents to use the least expensive transportation modality that meets the claimant's and her family's needs as set forth in the IPP. Although claimant and her family believe that Access is unreliable, it appears that most of their concerns about Access may be attributed to their misunderstanding about the manner in which Access operates. It is true that Access cannot arrive precisely at its scheduled time for pick up because of the nature of the service. It uses a 20-minute window because it must pick up and drop off other passengers and deal with the hazards of every-day traffic in completing its routes. It publicizes all operating procedures in its detailed Riders Guide for users and their families. The Guide tells users that it must realistically use a 20-minute window when picking up a rider at his or her scheduled time. Public transportation, whether Access or the public bus system is used, presents certain inconveniences. The evidence shows that the regional center's private transportation vendor follows similar procedures and is more costly. Access Services, though imperfect, can meet the family's and claimant's needs if they become familiar with the limitations of the service. Other than the public bus system, Access is the

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<sup>5</sup> See section 4659, which requires the regional center to identify and pursue all possible sources of funding for regional center consumers, including private entities, and governmental or other entities or programs required to provide or pay for services and private entities.

least expensive modality of transportation for claimant and her family. Access is also a generic resource available to claimant and satisfies the regional center's mandate to provide supports and services in a cost-effective manner.

13. Regional center has also offered to provide travel training services to claimant to enable her to take the public bus system safely. Claimant's goal is to become more independent and work in her chosen areas of interest. The Pathpoint program opines that with travel training services she will be ready to utilize the public bus system safely for transportation. She has had experience and training in the past from the NEXUS program in doing so and her family should consider this option and regional center's offer to provide travel training services.

14. In light of Factual Findings 1 through 14 and Legal Conclusions 1 through 13, NLARC's decision to deny funding of private transportation services is affirmed.

#### ORDER

Claimant's appeal is denied, and the regional center's action is upheld.

DATED: \_\_\_\_\_

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JANIS S. ROVNER  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

**This is a final administrative decision. Both parties are bound by the decision and either party may appeal the decision to a court of competent jurisdiction within 90 days.**